

## **REMARKS**

### **I. Introduction**

Claims 33 and 34 are canceled. Claims 17, 18, 25 and 30 have been amended. Claims 17-32, 35 and 36 remain pending in the present application. Applicants note with appreciation the acknowledgment of the claim for foreign priority and the indication that all certified copies of the priority documents have been received. For at least the reasons set forth below, Applicants submit that the pending claims are in condition for allowance.

### **II. Objection to Drawings**

In response to the drawing objection, Applicants have attached two sheets of replacement drawings containing typed descriptive labels for Figs. 2 and 3. Withdrawal of the drawing objection is respectfully requested.

### **III. Objection to the Title**

In response to the objection to the title of the invention, the title has been amended to "METHOD AND SYSTEM FOR REMOTE PROGRAMMING OF A PROGRAM-CONTROLLED DEVICE USING A LEGITIMIZATION CODE." Withdrawal of the title objection is respectfully requested.

### **IV. Rejection of Claims 25-28 under 35 U.S.C. § 112, Second Paragraph**

Claims 25 and 26 were rejected for lack of antecedent basis with regard to the term "the second date," which has now been replaced with the correct term, "the second data." Accordingly, claims 25 and 26, as well as dependent claims 27 and 28, are definite. Withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

### **V. Rejection of Claims 17, 19, 21, 23 and 29-36 under 35 U.S.C. § 103(a)**

Claims 17, 19, 21, 23 and 29-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent App. No. 2002/0019877 ("Wrede") in view of U.S. Publication No. 2003/0035429 ("Banas").

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28

U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 17 has been amended to recite, in relevant parts, “remotely transmitting a legitimization from the control station to the interface, the legitimization forming a security code associated with the device,” and “**forwarding the legitimization, unbuffered, to the device immediately upon receiving the legitimization at the interface.**” Claim 30 has been amended to recite similar features as claim 17.

The Examiner contends that the identification code in paragraph [0026] of Wrede constitutes a legitimization code. As an initial matter, Wrede does not forward the identification code to a device before determining the validity of the code. According to claim 17, the validity checking is performed at the device, which can only do so after the legitimization is forwarded by the interface. In contrast, Wrede uses a central computer ZFR, which operates as both a buffer and a check on the identification code. The device being programmed, i.e., a control unit SG, does not receive the identification code until after the code is checked. Accordingly, Wrede does not teach or suggest **checking the validity of a legitimization after it is forwarded to a device being programmed**.

In addition, Wrede does not refer to the immediate transmission of a legitimization code and there is nothing to suggest that the identification code is immediately transmitted. The only information provided about the transmission of the identification code is that it is somehow sent to the central vehicle computer. Therefore, Wrede does not teach or suggest **forwarding the legitimization, unbuffered, to the device immediately upon receiving the legitimization at the interface.**

Banas fails to remedy the deficiencies of Wrede as applied against claim 17. Accordingly, the combination of Wrede and Banas fails to render obvious claims 17 and 30, as well as dependent claims 19, 21, 23, 29 and 31, 32, 35 and 36.

In view of all of the foregoing, withdrawal of the obviousness rejection of claims 17, 19, 21, 23 and 29-32, 35 and 36 is respectfully requested.

#### VI. **Rejection of Claims 18, 20, 22 and 24 under 35 U.S.C. § 103(a)**

Claims 18, 20, 22 and 24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wrede in view of Banas and U.S. Publication No. 2002/0129043 ("Nakada").

Claim 18 is similar to claim 17 in that the validity checking is performed at the device, which can only do so after the legitimization is forwarded by the interface. As discussed above in connection with the rejection of claim 17, Wrede does not teach or suggest checking the validity of a legitimization after it is forwarded to a device being programmed. Accordingly, claim 18 is allowable for at least this reason.

In addition, claim 18 has been amended to recite, in relevant parts, "**buffering the legitimization at the interface by storing the legitimization together with the program data,**" and "**assigning a validity period to the legitimization.**" First, Wrede does not mention buffering the identification code together with the program data. As discussed above, the only mention in Wrede of transmitting the identification code is that the code is sent to the central vehicle computer. When the identification code is sent and where it is stored are not disclosed. Therefore, Wrede does not teach or suggest **buffering the legitimization at the interface by storing the legitimization together with the program data**. Second, the identification code in Wrede is not assigned a validity period, after which

the code is no longer considered valid; instead, the identification code is always considered valid after determining that the new code coincides with the original code. Therefore, Wrede does not teach or suggest **assigning a validity period to the legitimization**.

Banas and Nakada fail to remedy the deficiencies of Wrede as applied against claim 18. Accordingly, the combination of Wrede, Banas and Nakada fails to render obvious claim 18, as well as dependent claims 20, 22 and 24.

In view of all of the foregoing, withdrawal of the obviousness rejection of claims 18, 20, 22 and 24 is respectfully requested.

#### **VII. Rejection of Claims 25-28 under 35 U.S.C. § 103(a)**

Claim 25 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wrede in view of Banas and U.S. Publication No. 2004/0054444 ("Abeska").

Claims 26-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wrede in view of Banas, Nakada and Abeska.

Claim 25 ultimately depends on claim 17. Claims 26-28 ultimately depend on claim 18. Abeska fails to remedy the deficiencies of Wrede and Banas as applied against claim 17, and the deficiencies of Wrede, Banas and Nakada as applied against claim 18. Accordingly, the combination of Wrede, Banas, Nakada and Abeska fails to render obvious claims 25-28.

In view of all of the foregoing, withdrawal of the obviousness rejection of claims 25-28 is respectfully requested.

**Conclusion**

In light of the foregoing, Applicants respectfully submit that all of the pending claims 17-32, 35 and 36 are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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